Policy Brief

Opposing the conflation of female genital mutilation and gender-affirming care in the US

July 2025

Equality Now

A just world for all women and girls

Background & context

Over recent years, there has been an alarming rise in the conflation of female genital mutilation (FGM) with gender-affirming care by anti-trans agendas in an attempt to criminalize gender-affirming care for minors. This conflation is a strategic co-optation of FGM-related legal frameworks and terminology to marginalize transgender communities and obstruct access to medically necessary care.

In January 2025, the White House issued an Executive Order titled *Protecting Children from Chemical and Surgical Mutilation*, framing gender-affirming medical treatments for minors as "chemical and surgical mutilation," equivalent to FGM.[1] This was followed by a directive from US Attorney General Pam Bondi, instructing the Department of Justice (DoJ) to investigate and prosecute providers of gender-affirming care under the Strengthening the Opposition to Female Genital Mutilation Act of 2020 (STOP FGM Act).[2]

Most recently, in May 2025, members of the US Congress introduced legislation to amend the STOP FGM Act, attempting to expand its scope to criminalize gender-affirming care under the guise of protecting children from FGM.[3] If enacted, HR 3492 would impose federal criminal penalties on healthcare providers and others who facilitate gender-affirming care for minors, including prescribing hormone therapy or puberty blockers and performing any surgical intervention.

When trusted officials and other groups conflate FGM with gender-affirming care, such efforts are not only medically and ethically unfounded, but also legally incoherent. Conflating FGM with gender-affirming care misrepresents the nature and intent of both, undermines protections for women and girls at risk of FGM, and threatens the rights of transgender individuals to access necessary healthcare services. This memo outlines the legal and human rights distinctions between FGM and gender-affirming care, with particular attention to statutory interpretation, constitutional standards, and international human rights obligations.

It is grounded in Equality Now's mandate to end harmful practices, including FGM, and is written primarily from that perspective. As such, it focuses on the legal and human rights standards relating to FGM, while highlighting why gender-affirming care cannot be legally or ethically conflated with FGM. It is intended to complement other resources and research from LGBTQ+ and transgender rights groups.[4]

Definitions

Female genital mutilation

The World Health Organization defines FGM as "all procedures involving the partial or total removal of the female external genitalia or other injuries to the female genital organs for non-medical reasons."[5] FGM is a harmful cultural practice grounded in gender inequality, often justified by sociocultural beliefs about honor, purity, and marriageability.[6] FGM can cause lasting physical and psychological harm, including chronic pain, infections, complications in childbirth, post-traumatic stress disorder, and loss of sexual function. It is recognized as a form of child abuse, violence against women and girls, and gender-based discrimination, as explicitly set out by the US Congress under the STOP FGM Act.[7] It is also recognized under international human rights law as a form of torture and a violation of the rights to equality and non-discrimination.[8]

FGM is a harmful cultural practice grounded in gender inequality, often justified by sociocultural beliefs about honor, purity, and marriageability.

In the United States, the Centers for Disease Control found in 2016 that 513,000 women and girls have undergone or at risk of FGM.[9] This number varies widely by state.[10] Women and girls living in the US, including citizens, continue to be at-risk of FGM. They may be subject to FGM on US land, or taken to neighboring states or to their families' countries of origin—a practice known as "vacation cutting." Most girls are subjected to FGM between birth and age 15, but FGM can occur at all ages including through adulthood.

Gender-affirming care

Gender-affirming care refers to a spectrum of medical and psychological interventions that support individuals in aligning their physical traits with their gender identity.[11] This may include counseling, puberty blockers, hormone therapy, and surgical procedures. These interventions are recommended by major medical associations, including the American Medical Association,[12] the American Academy of Paediatrics,[13] and the World Professional Association for Transgender Health,[14] as evidence-based treatments for gender dysphoria,[15] a clinically recognized condition.

Research shows that gender-affirming care significantly improves mental health outcomes, reduces risk of suicide, and enhances quality of life among transgender youth.

Such care is delivered in accordance with established clinical guidelines and ethical norms.[16] For minors, treatment is subject to multi-disciplinary review, including psychological evaluations and alignment with the child's best interests. Research shows that gender-affirming care significantly improves mental health outcomes, reduces risk of suicide, and enhances quality of life among transgender youth.[17]

Key distinctions

A. Consent & autonomy

FGM is a harmful practice imposed on individuals, often through social coercion and pressure, and carried out on minors without their knowledge or consent.[18] It violates the fundamental legal principle of bodily autonomy and constitutes child abuse under both US and international law. It also infringes on the sexual and reproductive health rights of women and girls, as it is aimed at controlling female sexuality.

In many communities where FGM is prevalent, there is tremendous social pressure and coercion to uphold the harmful practice. The US Court of Appeals for the Sixth Circuit recognized these dynamics in *Abay v. Ashcroft*, where it granted asylum to an Ethiopian mother due to a well-founded fear that her young daughter would be subjected to FGM if they returned to Ethiopia.[19] The Court emphasized the widespread nature of FGM and the serious risk that relatives or community members could forcibly subject the child to FGM, even against the mother's wishes.[20] Resistance to FGM is often met with social sanctions, including community ostracization. Many survivors of FGM in the United States report being taken by their parents to be cut without being told what would happen, what FGM entails, or what its potential impacts might be.[21]

The issue of the lack of consent in cases of FGM is also discussed extensively by the High Court of Kenya in *Tatu Kamau v. Attorney-General*, where the Court noted: *"The context within which FGM/C is practiced is relevant as there is social pressure and punitive sanctions. From the evidence, it is clear that those who undergo the cut are involved in a cycle of social pressure from the family, clan and community. They also suffer serious health complications while those who refuse to undergo it suffer the consequences of stigma."*[22]

Gender-affirming care, by contrast, is consent-based and medically necessary.[23] It is delivered following a rigorous and ongoing informed consent process involving clinical evaluation and, for minors, parental involvement. The legal principles of informed consent are central to distinguishing therapeutic procedures from coercive or abusive acts.[24]

B. Purpose, intent, & medical legitimacy

FGM lacks any medical justification and is uniformly condemned by all major medical and public health authorities, including the American Academy of Pediatrics,[25] and the American Medical Association.[26] The WHO definition of FGM explicitly states that it occurs for "non-medical reasons."[27] The harmful practice is rooted in gender inequality and is closely related to patriarchal norms regarding women and girls' honor, sexual "purity," and marriageability.[28] In some contexts, FGM is framed as a rite of passage or a marker of cultural identity. Regardless of rationale, both international and domestic law uniformly categorize FGM as a harmful practice and a form of gender-based violence.

US jurisprudence has also affirmed the severity of FGM and its consequences. In *In re Kasinga*, the Board of Immigration Appeals explicitly recognized the medical harms caused by FGM, finding that "*FGM is extremely painful and at least temporarily incapacitating. It permanently disfigures the female genitalia. FGM exposes the girl or woman to the risk of serious, potentially life-threatening complications. These include, among others, bleeding, infection, urine retention, stress, shock, psychological trauma, and damage to the urethra and anus. It can result in permanent loss of genital sensation and can adversely affect sexual and erotic functions*."[29]

By contrast, gender-affirming care is a clinically indicated treatment for individuals experiencing gender dysphoria, a recognized medical condition.[30] These interventions are performed by licensed professionals in accordance with established standards of care and supported by peer-reviewed research demonstrating their efficacy in improving mental health outcomes and overall well-being.

Under current federal law, gender-affirming care falls within the medical exception to the prohibition on FGM. The STOP FGM Act, 2020 expressly excludes from its scope and surgical procedure "necessary to the health of the person on whom it is performed, and is performed by a person licensed in the place of its performance as a medical practitioner." This exception reflects a clear intent to distinguish between non-consensual, non-therapeutic procedures like FGM and legitimate medical treatments like gender-affirming care.

US courts have also affirmed the medical legitimacy of gender-affirming care. In *O'Donnabhain v. Commissioner*, the US Tax Court specifically recognized that treatment for gender dysphoria qualifies as "medical care" under the Internal Revenue Code.[31] The Court rejected the argument that such procedures are merely "cosmetic," recognizing instead that they are therapeutic treatments for a diagnosed medical condition and must be respected as such when provided with informed consent and clinical oversight.

C. Legal frameworks

FGM is criminalized under the STOP FGM Act 2020, which makes it illegal to perform FGM on a girl under the age of 18, or for a parent, caretaker, or guardian of a girl under the age of 18 to facilitate or consent to FGM being performed on her.[32] The statute defines FGM as a non-consensual, non-medical procedure, and includes explicit exceptions for care necessary to the health of the patient. The legislative history of the statute emphasizes its purpose as preventing gender-based violence against women and girls.

At the state level, 41 states have enacted anti-FGM laws, and three–California, Colorado, and Maryland–have included specific language clarifying that gender-affirming care is not within their scope. These exclusions reflect the legislative recognition that gender-affirming care is distinct from FGM and should not be criminalized under laws aimed at eliminating gender-based violence.[33]

Attempts to prosecute gender-affirming care under anti-FGM statutes misapply this legislative intent. As US courts have consistently held, statutes must be interpreted in accordance with their text, purpose, and legislative history.[34] The STOP FGM Act is a gender-based violence statute designed to address coercive practices rooted in gender inequality, not medically indicated treatments. Conflating therapeutic procedures with FGM under the STOP FGM Act expands the law beyond its intended scope and purpose.

In addition, when interpreting criminal statutes, courts are required to construe ambiguous terms narrowly. The rule of lenity ensures that any ambiguity in the scope of criminal liability is resolved in favor of the accused.[35] Expanding the scope of implementation of anti-FGM statutes to gender-affirming care thus raises significant constitutional concerns for due process and undermines the fair notice requirements embedded in criminal law.

Credit: dkfielding - iStock

Constitutional protections & judicial trends

In *United States v. Skrmetti*, the US Supreme Court upheld a Tennessee law banning gender-affirming care for minors.[36] The Court applied rational basis review–the lowest level of judicial scrutiny–concluding that the law did not constitute a sex-based classification or violate a fundamental right under the Due Process Clause of the US Constitution. This decision reflects a formalistic interpretation of equal protection doctrine, which relied on a narrow reading of the law that ignored how it disproportionately harms transgender youth in practice.[37]

While *Skrmetti* significantly narrows constitutional protections for gender-affirming care, it does not equate such care with FGM or question the medical necessity of gender-affirming care. The ruling does, however, signal a growing judicial deference to state-level restrictions and a significant narrowing of substantive due process protections.

Importantly, even in an evolving legal landscape, courts continue to require that criminal statutes provide fair notice and are not applied in vague or overly expansive ways. The constitutional principles of statutory clarity and the rule of lenity remain in force, regardless of political efforts to broaden the reach of existing anti-FGM statutes. Efforts to prosecute cases of gender-affirming care using existing FGM statutes remain inconsistent with legislative purpose and undermine legal coherence.

Proposals to expand anti-FGM statutes must still be evaluated in light of their consistency with constitutional standards, statutory interpretation principles, and international human rights law.

International legal obligations

Women and girls have a fundamental right to live free from violence and be protected from FGM under the core international and regional human rights treaties.[38] FGM is widely recognized as a form of sex- and gender-based discrimination and a violation of the rights to bodily autonomy, freedom from torture, non-discrimination, and the highest attainable standard of health. International and regional mechanisms have consistently affirmed that States have legal obligations to prevent and eliminate this harmful practice.

At the same time, human rights principles, including the Yogyakarta Principles,[39] recognize the rights of transgender individuals to live free from discrimination and access necessary medical care under international law. This has been affirmed by the UN Independent Expert on Sexual Orientation and Gender Identity, who has made clear that denial of such care contravenes the rights to the highest attainable standard of health, to privacy, and to non-discrimination.[40]

The United States also has specific obligations under the International Covenant on Civil and Political Rights (ICCPR), which it has ratified, to protect the rights to bodily integrity and freedom from torture or cruel, inhuman, or degrading treatment and to non-discrimination, which are implicated in the contexts of FGM and gender-affirming care.[41] Indeed, the UN Human Rights Committee, the body which oversees compliance with the ICCPR, in its 2023 review of the United States, urged the Government to "effectively implement" the STOP FGM Act and, at the same time, expressed significant concern at "laws that ban and, in some instances, criminalize gender-affirming care for transgender persons."[42]

Legal & policy risks of conflation

Efforts to equate gender-affirming care with FGM, whether through the misapplication of existing statutes or the amendment or enactment of laws to explicitly include such care, are legally unsound and dangerous. The risks fall into two primary categories: misuse of current law and consequences of legislative amendment:

Risks associated with misapplying existing FGM laws:

1. Statutory misinterpretation: The STOP FGM Act was enacted with the specific legislative intent of demonstrating the US' "commitment to the rights of women and girls" by tackling FGM as a "human rights violation and a form of child abuse, gender discrimination, and violence against women and girls." Misapplying this statute, and others at the state-level, to medically necessary and evidence-based procedures stretches the legislative intent beyond its comprehensible meaning. Under federal law and in many states, medically necessary procedures are also explicitly excluded from the scope of anti-FGM laws.

2. Contravention of the rule of lenity: Expanding anti-FGM statutes to criminalize gender-affirming care raises due process concerns by violating the principle that criminal laws must provide clear notice of prohibited conduct. Applying vague or overly broad interpretations in this context risks unconstitutional enforcement.

3. Erosion of legal protections: Conflation undermines the enforcement of anti-FGM laws by politicizing them and potentially weakening their application. This also risks further alienating communities affected by FGM and reducing their trust in the legal systems in place to protect them.

Risks associated with amending anti-FGM statutes:

1. Chilling effect on medical practice: Enforcing anti-FGM statutes against gender-affirming care–or going so far as to amend such statutes–deters providers from delivering medically necessary care to both populations.

2. Contradiction with medical ethics: All major medical associations uniformly oppose efforts to criminalize evidence-based care for transgender individuals. The conflation of gender-affirming care with FGM runs counter to established clinical standards and threatens public health.

3. Contravention of international human rights law: Efforts to criminalize gender-affirming care under anti-FGM statutes run in violation of established international legal frameworks and the United States' binding obligations under such, which require both the elimination of harmful practices like FGM and the protection of access to non-discriminatory, essential healthcare services like gender-affirming care.

Conclusion & recommendations

Conflating FGM with gender-affirming care is not only medically and legally inaccurate, but is also deeply harmful. It threatens the ability of transgender individuals to access necessary, life-saving care, while undermining hard-fought protections for women and girls against gender based violence.

Moving forward, targeted action from lawmakers, legal advocates, and civil society will be essential to uphold legal clarity, protect vulnerable communities, and resist the politicization of human rights protections.

For policymakers:

- **Reject conflation-based legislation:** Oppose bills that seek to rewrite existing anti-FGM legislation to criminalize gender-affirming care.
- **Preserve legislative intent:** Ensure anti-FGM laws remain focused and are not interpreted to criminalize gender-affirming care.
- **Uphold international law:** Align domestic laws and policies with international human rights commitments, including protecting the right to the highest attainable standard of health, bodily autonomy, equality, and non-discrimination.

For legal advocates:

- **Defend statutory coherence:** Emphasize the distinct legislative histories and legal distinctions underying FGM and gender-affirming care in advocacy and litigation.
- **Invoke constitutional protections:** Raise the roles of due process, fair notice, and the rule of lenity in challenging attempts to criminalize gender-affirming care under anti-FGM legislation
- **Track and respond to legal threats:** Monitor pending legislation and litigation that seeks to expand the application of FGM laws or prosecure gender-affirming care providers under their scope. Use proactive legal interventions to ensure early intervention and preserve the integrity of anti-FGM laws and access to gender-affirming care.

For civil society organizations:

- **Educate and mobilize:** Utilize accessible, rights-based language to inform the public and policymakers about FGM, gender-affirming care, and the dangers of conflating the two issues. Elevate survivor voices and experiences in advocacy work.
- **Strengthen intersectional work:** Collaborate with anti-FGM advocates and LGBTQI+ rights groups to promote unified messaging and strong advocacy against conflation-based laws and narratives.
- **Protect the integrity of anti-FGM efforts:** Ensure that anti-FGM advocacy is not co-opted or weaponized, and promote the implementation of existing FGM laws for their intended purpose.

Protecting all individuals from harm requires combating forced, harmful practices and ensuring access to medically necessary care. Maintaining legal precision, medical accuracy, and rights-based consistency is essential to ensuring that all people are protected from gender-based violence and are empowered to act as autonomous decision makers.

Endnotes

1 Protecting Children from Chemical and Surgical Mutilation, The White House (Jan. 28, 2025), https://www.whitehouse.gov/presidential-actions/2025/01/protecting-children-from-chemical-and-surgical-mutilation/.

2 Pam Bondi, Att'y Gen., U.S. Dep't of Just., Memorandum on Preventing the Mutilation of American Children (Apr. 22, 2025), https://www.justice.gov/ag/media/1402396/dl; STOP FGM Act of 2020, 18 U.S. Code § 116.

3 H.R. 3492 - Protect Children's Innocence Act of 2025, Congress.Gov, https://www.congress.gov/bill/119th-congress/house-bill/3492/amendments (last visited July 8, 2025).

4 See, e.g., ABA amicus brief asserts ban on gender-affirming care denies equal protection, American Bar Association (Sept. 3, 2024), https://www.americanbar.org/news/abanews/aba-news-archives/2024/09/aba-amicus-gender-affirming-care/; LGBTQ Policy Spotlight: Bans on Medical Care for Transgender People, Movement Advancement Project, https://www.mapresearch.org/file/MAP-2023-Spotlight-Medical-Bans-report.pdf (last visited July 7, 2025).

5 Female Genital Mutilation, World Health Organization, https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation (last visited June 3, 2025).

6 Female Genital Mutilation, Equality Now, https://equalitynow.org/female-genital-mutilation/ (last visited June 27, 2023).

7 STOP FGM Act of 2020, 18 U.S. Code § 116.

8 UNFPA, Implementation of the International and Regional Human Rights Framework for the Elimination of Female Genital Mutilation (2014), https://www.unfpa.org/publications/implementation-international-and-regional-human-rights-framework-elimination-female; Concluding observations on the fifth periodic report of the United States of America, Human Rights Committee, CCPR/C/USA/CO/5 (Nov. 5, 2023), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FUSA%2FCO%2F5&Lang=en.

9 Goldberg et al., Female Genital Mutilation/Cutting in the United States: Updated Estimates of Women and Girls at Risk, Pub. H. Rep. (2016); Callaghan, S., Female Genital Mutilation/Cutting (FGM/C) in the United States: A study of the prevalence, distribution, and impact of FGM/C in the U.S., 2015-2019 (2023), https://doi.org/10.31219/osf.io/7a9c3.

10 Laws Against FGM - State by State (Map), Equality Now, https://equalitynow.org/us-laws-against-fgm-state-by-state-map/ (last visited June 3, 2025).

11 Boyle, What is gender-affirming care? Your questions answered, AAMC (Apr. 12, 2022), https://www.aamc.org/news/what-gender-affirming-care-your-questions-answered.

12 AMA to States: Stop interfering in health care of transgender children, AMA (Apr. 26, 2021), https://www.ama-assn.org/press-center/ama-press-releases/ama-states-stop-interfering-health-care-transgender-children.

13 Wyckoff, AAP reaffirms gender-affirming care policy, authorizes systematic review of evidence to guide update, AAP (Aug. 4, 2023), https://publications.aap.org/aapnews/news/25340/AAP-reaffirms-gender-affirming-care-policy?autologincheck=redirected.

14 WPATH, Standards of Care for the Health of Transgender and Gender Diverse People, 23 Int'l J. Trans. H. S1 (2022), https://www.tandfonline.com/journals/wijt21.

15 Gender Dysphoria, Mayo Clinic, https://www.mayoclinic.org/diseases-conditions/gender-dysphoria/diagnosis-treatment/drc-20475262 (last visited June 27, 2025).

16 Standards of Care for Transgender and Gender Diverse People, JAMA Clinical Guidelines 1872 (2023), https://jamanetwork.com/journals/jama/fullarticle/2805345.

17 Tordoff et al., Mental Health Outcomes in Transgender and Nonbinary Youths Receiving Gender-Affirming Care, 5(2) JAMA Netw. Open e220978 (2022), https://pubmed.ncbi.nlm.nih.gov/35212746/.

18 Female Genital Mutilation, Equality Now, https://equalitynow.org/female-genital-mutilation/ (last visited June 27, 2025).

19 Abay v. Ashcroft, 368 F.3d 634 (6th Cir. 2004).

20 Id., at 642.

21 See, e.g., Uniting Together Against FGM/C, Voices to End FGM/C, https://www.voicestoendfgmc.org/ (last visited July 8, 2025).

22 Tatu Kamau v. Att'y Gen., KEHC 450 (H.C.K. 2021).

23 Boyle, What is gender-affirming care? Your questions answered, AAMC (Apr. 12, 2022), https://www.aamc.org/news/what-gender-affirming-care-your-questions-answered.

24 Shah et al., Informed Consent, Nat'l Lib. Med. (2024), https://www.ncbi.nlm.nih.gov/books/NBK430827/.

25 Young et al., Diagnosis, Management, and Treatment of Female Genital Mutilation or Cutting in Girls, 146(2) Pediatrics e20201012 (2020), https://doi.org/10.1542/peds.2020-1012.

26 Council on Scientific Affairs, Am. Med. Ass'n, Female Genital Mutilation, 274 JAMA 1714 (1995), https://jamanetwork.com/journals/jama/article-abstract/392298.

27 Female Genital Mutilation, World Health Organization, https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation (last visited June 3, 2025).

28 Female Genital Mutilation, Equality Now, https://equalitynow.org/female-genital-mutilation/ (last visited June 27, 2023).

29 In re Kasinga, 21 I. & N. Dec. 357, 360-61 (B.I.A. 1996).

30 Gender Dysphoria, Mayo Clinic, https://www.mayoclinic.org/diseases-conditions/gender-dysphoria/diagnosis-treatment/drc-20475262 (last visited June 27, 2025).

31 O'Donnabhain v. Comm'r, 134 T.C. 34 (2010).

32 STOP FGM Act of 2020, 18 U.S. Code § 116.

33 Laws Against FGM - State by State (Map), Equality Now, https://equalitynow.org/us-laws-against-fgm-state-by-state-map/ (last visited June 3, 2025).

34 Statutory Interpretation: Theories, Tools, and Trends, Congress.Gov (Mar. 10, 2023), https://www.congress.gov/crs-product/R45153.

35 Rule of Lenity, Legal Information Institute (May, 2022), https://www.law.cornell.edu/wex/rule_of_lenity; see, e.g., Garland v. Cargill, 602 U.S. 406 (2024) (applying the rule of lenity to hold that ambiguous criminal statutes must be interpreted in favor of the defendant).

36 United States v. Skrmetti, 605 U.S. __ (2025).

37 See,The Supreme Court ruling in the Skrmetti case should have taken sex discrimination into account: 5 things to know, Equality Now (June 30, 2025), https://equalitynow.org/news/news-and-insights/the-supreme-court-ruling-in-the-skrmetti-case-should-have-taken-sex-discrimination-into-account-5-things-to-know/.

38 Eliminating Female genital mutilation, An Interagency Statement, OHCHR et al (2008), https://www.un.org/womenwatch/daw/csw/csw52/statements_missions/Interagency_Statement_on_Eliminating_FGM.pdf.

39 The Yogyakarta Principles, https://yogyakartaprinciples.org/principles-en/ (last visited June 27, 2025).

40 U.N. Human Rights Council, Visit to the United States of America – Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz, U.N. Doc. A/HRC/56/49/Add.3 (June 12, 2024).

41 International Covenant on Civil and Political Rights, 19 Dec. 1966, 999 U.N.T.S 171.

42 Concluding observations on the fifth periodic report of the United States of America, Human Rights Committee, CCPR/C/USA/CO/5 (Nov. 5, 2023), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FUSA%2FCO%2F5&Lang=en.

Equality Now

A just world for all women and girls

equalitynow.org

supporters@equalitynow.org

@equality-now